

## **REMARKS**

Claims 1-11 and 14-43 are pending, claims 12 and 13 having been previously cancelled, and claims 3, 10, 11, 16-28 and 34-37 having been withdrawn from consideration. Claims 1, 2, 4-15, 29-33 and 38-41 having been elected by applicants pursuant to the May 12, 2004 Response to Restriction/Election Requirement posed in this application. Claims 1, 4-8, 29, 31 and 38-40 are amended. Support for the amendments is provided in the Specification at page 11, first paragraph, page 13, first paragraph, and at Figures 1C, 2A & 2B, for example. No new matter is submitted. Accordingly, entry and consideration of the amendment is respectfully requested.

This amendment is submitted in response to the Final Office Action mailed May 5, 2005 in order to request reconsideration of the rejected claims as set forth herein. In the event the Examiner determines that the foregoing amendments do not place this application in condition for allowance, entry of the amendment is nevertheless respectfully requested in order to place the claims in better form for consideration on appeal.

Applicants appreciate the withdrawal of the objection to claims 31-33, as indicated in item 9 of the Office Action.

In item 1 of the Office Action, claims 1, 2, 4, 5, 7-9, 14, 15, 29-33, 38, 39 and 41-43 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 6,117,147 to Simpson, et al. (hereafter "Simpson) in view of U.S. Patent Publication No. 2001/0044631 to Akin, et al. (hereafter "Akin"). The rejection is respectfully traversed.

Independent claim 1 of Applicants' invention recites a device for creating an anastomosis between first and second vessels comprising, *inter alia*, an extravascular body having an outer surface and an inner surface, the inner surface forming a portion of an opening,

the opening configured to contact the first vessel, first securing means for securing the first vessel to the inner surface of the opening, and second securing means for securing a portion of the second vessel to a portion of the outer surface of the body such that a hole formed in the portion of the second vessel is in fluid communication with the first vessel. Independent claim 29 of Applicants' invention recites a method for creating an anastomosis between first and second vessels comprising, *inter alia*, attaching a portion of the first vessel to a first portion of an outer surface of an extravascular body having an opening therethrough, and attaching a portion of the second vessel to a second portion of the outer surface of the body.

Simpson discloses a device 14 for reinforcing an anastomotic site and vascular graft vessel 10. The device 14 is comprised of a cuff 18, a body 16 and a sleeve 12, whereby an outer surface of a cuff 18 is adhered to an anastomotic site 24 (col. 3, lines 28-31 & Figs. 2, 3, 4B& 5A). The body 16 is then adhered to the cuff 18, and the sleeve 12 is then adhered to the body 16 (col. 3, lines 59-61 & Fig. 4A). The sleeve 12, body 16 and cuff 18 thus receive the graft vessel 10 and help orient the graft vessel relative to the anastomotic site 24, but do not secure or attach the graft vessel 10 to any portion thereof. Rather, only an outer surface of the cuff 18 is disclosed as being secured to any portion of the vasculature in Simpson. Simpson thus fails to teach or suggest a first securing means that secures portions of a first vessel and a second vessel to a surface of a resorbable extravascular body as recited in each of independent claims 1 and 29, from which all other pending claims directly or indirectly depend. Further, as the Office Action concedes, Simpson fails to teach a resorbable body as recited in Applicants' claims 1 and 29.

Akins is applied for the resorbable aspect of its anastomotic device. Akins however, teaches an intravascular device 1 that fails to overcome the deficiencies of Simpson

detailed above. Akins thus fails to disclose an extravascular resorbable body to which a first vessel and a second vessel are secured, as recited in each of independent claims 1 and 29 of Applicants' invention. Applicant further maintains that the intravascular device of Akins provides no motivation for teaching or suggesting a resorbable body in combination with an extravascular device and method, as also recited in independent claims 1 and 29 of Applicants' invention.

Accordingly, neither of Simpson nor Akins, alone or in combination, teach, disclose or suggest the combination of features recited in independent claims 1 and 29 of Applicants' invention, from which all remaining claims depending. Accordingly, withdrawal of the 35 U.S.C. §103 (a) rejection of claims 1, 2, 4, 5, 7-9, 14, 15, 29-33, 38, 39 and 41-43 based on the combination of Simpson and Akins is respectfully requested.

The reference in item 10 of the Office Action that Simpson was aware of resorbable art but did not disclose such as an alternative in its claims, is tantamount to surrender of such subject matter under *Festo* in any case. Moreover, Simpson's brief reference to absorbable patches at col. 1, lines 20-28 in discussing other art, is suggestive that Simpson's device 14 is not intended to be resorbable in any case, otherwise it would have been specifically disclosed as such. Further, the combination of the *intra*-vascular device of Akin lends no motivation to combine itself with the *extravascular* device of Simpson, contrary to the assertion in the Office Action.

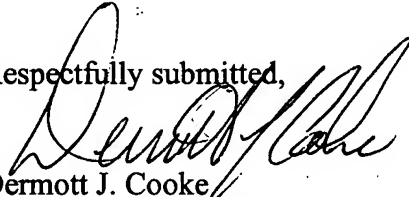
In item 7 of the Office Action, claims 6 and 40 are rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Simpson in view of Akins, and further in view of U.S. Patent Publication No. 2001/0044631 to Leonhardt, et al.(hereafter "Leonhardt"). The rejection is respectfully traversed.

Independent claims 1 and 29 of applicants' invention are discussed above, from which claims 6 and 40 indirectly respectively depend. Likewise, Simpson and Akins are discussed above. Leonhardt is applied for teaching a balloon catheter for urging inner member towards outer members, but fails to overcome the deficiencies of Simpson and Akins as detailed above. Accordingly, withdrawal of the 35 U.S.C. §103(a) rejection of claims 6 and 40 based on the combination of Simpsons, Akins and Leonhardt is respectfully requested.

Applicants submit that the claims presented are patentably distinguished over the art applied and pose no 35 U.S.C. §112 issues. Accordingly, prompt allowance of this application is respectfully requested.

Should the Examiner determine that anything further is desirable to place this application in even better form for allowance, the Examiner is invited to contact the undersigned at the telephone number indicated below.

Respectfully submitted,



Dermott J. Cooke  
Registration No. 41,685

Scully, Scott, Murphy & Presser  
400 Garden City Plaza, Suite 300  
Garden City, New York 11530  
(516) 742-4343  
DJC/jam/dg